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21.1 Special Time Requirement for Rehearings Following Termination of Parental Rights*

If parental rights have been terminated, a petition for rehearing must be filed not later than 20 days after the entry of the order terminating parental rights. MCL 712A.21(1); MSA 27.3178(598.21)(1).

*See Chapter 15 for a detailed discussion of rehearings.

21.2 Court Rules Governing Appeals in Child Protective Proceedings

Except as modified by MCR 5.993, Chapter 7 of the Michigan Court Rules governs appeals from the “juvenile court.” MCR 5.993(C).

21.3 Appeals by Right to the Court of Appeals*

In child protective proceedings, the following orders are appealable by right to the Court of Appeals:

- (1) an order of disposition placing a minor under the supervision of the court or removing the minor from the home;
- (2) an order terminating parental rights;
- (3) any order required by law to be appealed to the Court of Appeals; and
- (4) any final order.

*See also Sections 18.21–18.22 for a discussion of required procedures in cases involving termination of parental rights.

*See Section 16.22 (emergency removal hearings).

MCR 5.993(A)(1)–(4) and MCL 600.861(c)(i)–(ii); MSA 27A.861(c)(i)–(ii). An order of disposition leaving the child at home but giving the supervising agency the discretion to remove the child from his or her home is appealable by right to the Court of Appeals. See *In the Matter of Meeboer*, 134 Mich App 294, 299 (1984).*

In *In the Matter of Emmanuel Pantaleon*, __ Mich App __ (1999), respondent-mother appealed the trial court’s dispositional order removing the child from respondent’s home, where the child had been staying on an “extended home visit.” Following a dispositional review hearing, the trial court entered the order removing the child from respondent’s custody. The Court of Appeals held that respondent had an appeal by right of the trial court’s order. Although the petitioner maintained supervision of the child, the child was physically residing with respondent when the supplemental dispositional order was entered. The trial court’s order was “an order . . . removing the minor from his or her home” under MCR 5.993(A)(1).

There is no appeal of right by the petitioner to the Court of Appeals from an order denying termination of parental rights. *In re Youmans*, 156 Mich App 679 (1986), lv den 428 Mich 871 (1987). The petitioner may, however, file a subsequent petition seeking termination after gathering new evidence. *Santosky v Kramer*, 455 US 745, 764; 102 S Ct 1388; 71 L Ed 2d 599 (1982).

21.4 Appeals by Leave to the Court of Appeals

All orders not appealable by right are appealable by leave of the Court of Appeals. MCR 5.993(B).

21.5 Time Requirements

An appeal of right must be taken:

- F within 21 days after the entry of the order or judgment appealed from, or
- F within 21 days after entry of an order denying a motion for rehearing if the motion was filed within 21 days of the judgment or order appealed from.

MCR 7.204(A)(1)(a)–(b). If an appellant is entitled to appointment of an attorney and requests such appointment within 21 days after entry of a final judgment or order, the 21-day period for filing the appeal of right or filing a post-judgment motion runs from the entry of an order appointing or denying appointment of counsel. If a timely post-judgment motion is filed before the request for appellate counsel is made, the party may request appellate counsel within 21 days after the decision on the post-judgment motion. MCR 7.204(A)(1).

An application for leave to appeal must be filed within 21 days after the entry of the judgment or order appealed from. MCR 7.205(A). In addition,

if the appellant does not timely request counsel, timely file an appeal of right, or timely file an application for leave to appeal, appeal is by application for leave to appeal only. MCR 7.205(F)(1).

The following time requirements govern the parties and court when an appeal is sought in the Court of Appeals:

- F Transcripts must be filed within 42 days after they are ordered by the trial court. This period may be extended by motion filed with the Court of Appeals. MCR 7.210(B)(3)(b)(iii);
- F Appellant's brief must be filed within 28 days after the filing of the last timely transcript. This period may be extended by motion filed with the Court of Appeals, but not by stipulation of the parties. MCR 7.212(A)(1)(a)(i);
- F Appellees' briefs must be filed within 21 days after proof of service of appellant's brief. This period may be extended by motion filed with the Court of Appeals, but not by stipulation of the parties. MCR 7.212(A)(2)(a)(i). Appellees are not required to submit briefs on appeal; and
- F The lower court record must be filed within 21 days after the deadline for the filing of the appellees' briefs. MCR 7.210(H).

Appeals of orders terminating parental rights are to be given priority by the Clerks of the Supreme Court and Court of Appeals in scheduling them for submission to the courts. AO 1981-6, 412 Mich lxiv (1981).

21.6 Delayed Appeals

The Court of Appeals may not grant an application for leave to appeal an order terminating parental rights if the application is filed more than 63 days after entry of an order of judgment on the merits, or 63 days after entry of an order denying reconsideration or rehearing. MCR 5.993(C)(1).

21.7 Standards of Review

All appeals must be on a written transcript of the record made in the Family Division or on a record settled and agreed to by the parties and approved by the court. An appeal must not be tried de novo. MCL 600.866(1); MSA 27A.866(1).

An appeal of an order terminating parental rights is reviewed using a two-prong test. The Court of Appeals first reviews the trial court's determination that one of the statutory grounds for termination of parental rights has been met under the "clearly erroneous" standard. MCR 5.974(I) and *In re Miller*, 433 Mich 331, 337 (1989). Second, the Court of Appeals reviews the trial court's ultimate decision to terminate parental rights using a "clearly erroneous standard." *In re JS & SM*, 231 Mich App 92, 97–98 (1998). In *In re Cornet*, 422 Mich 274, 277 (1985), the Michigan Supreme Court

established that the “clearly erroneous” standard of review must be used to review orders terminating parental rights. The Court, quoting *Tuttle v Dep’t of State Highways*, 397 Mich 44, 46 (1976), defined the standard as follows:

“‘[A]n appellate court will set aside the findings of fact of a trial court sitting without a jury when such findings are clearly erroneous. In construing comparable ‘clearly erroneous’ language in Rule 52(a) of the Federal Rules of Civil Procedure, the United States Supreme Court has stated that ‘[a] finding is ‘clearly erroneous’ when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.’ . . . Appropriately, the ‘judicial sieve’ with which we have sifted the evidence in this non-jury trial is ‘of finer mesh than the one correspondingly employed on review’ of a jury’s verdict.’”

Cornet, supra, at 278.

Once the petitioner has established by clear and convincing evidence that one or more of the statutory grounds for termination of parental rights has been met, the trial court’s decision to terminate parental rights is no longer discretionary. MCL 712A.19b(5); MSA 27.3178(598.19b)(5), and *In re Hall-Smith*, 222 Mich App 470, 472–73 (1997). Thus, the trial court’s determination of whether termination is clearly not in the child’s best interest must not be reviewed using an abuse of discretion standard. See *In re JS & SM*, 231 Mich App 92, 97–98 (1998).

A refusal to grant a request for rehearing will be reversed by the Court of Appeals only when the refusal represents an abuse of discretion. *In re Johanson*, 156 Mich App 608, 611 (1986).

21.8 Collateral Attack of Jurisdiction

In *In re Hatcher*, 443 Mich 426, 437 (1993), the Court found that subject matter jurisdiction of protective proceedings is established “by the contents of the petition after the probate judge or referee has found probable cause to believe that the allegations contained within the petitions are true.” Subsequent procedural errors do not deprive the court of jurisdiction. If the trial court lacks subject matter jurisdiction, subsequent proceedings are void; if the court has subject matter jurisdiction, subsequent errors may only result in reversal.

For purposes of appeal, this means that a party who wishes to attack the court’s assumption of subject matter jurisdiction must do so on direct appeal following the court’s disposition, or during a rehearing. No “collateral attack” of the court’s subject matter jurisdiction is possible. *Id.*, at 438–44, and *In re Powers*, 208 Mich App 582, 587–88 (1995).

Separate appeals may be taken from the court's order assuming jurisdiction and the court's order terminating parental rights. MCR 5.993(A)(1) and (2).

21.9 Stay of Proceedings

The order of the trial court appealed from is not suspended during the pendency of an appeal unless the Court of Appeals specifically orders the suspension. MCL 600.867(2); MSA 27A.867(2), and MCL 600.1041; MSA 27A.1041.

21.10 Use of Minor's Initials in Published Opinions

In appeals from a judgment of the "juvenile court" in child protective proceedings, the Supreme Court Reporter must delete the full name of the minor and replace it with the minor's initials before the Supreme Court or Court of Appeals opinion is published. MCR 5.993(C)(2).

